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EX PARTE PRESENTATION

May 30, 1995 MAY 30 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Docket No. 92-77 - Billed Party Preference

Dear Mr. Caton:

Sprint is submitting the attached article, which appeared in today's Wall Street Journal, for inclusion in the record in the above-referenced docket. The article underscores the point that Sprint, and other supporters of billed party preference, have been making throughout this proceeding: that the present environment of presubscription of public phones creates built-in incentives to charge high rates to the public.

The article also lends further support to Sprint's contentions, in its August 1, 1994 Comments and September 14, 1994 Reply Comments, that the commission payments to public phone premises owners and the alternative operator service providers' ("OSPs") rates are much higher than the Commission assumed in the Commission's cost-benefit analysis of billed party preference; and that the growth in dial-around traffic is irrelevant to the cost-benefit analysis, because the alternative OSPs appear to be increasing their rates to maintain constant revenues in the face of declining call volumes. The article also reveals that alternative OSPs account for a 40% market share of NYNEX's payphones. All these data further strengthen the conclusion that the benefits to the public from implementing billed party preference would far outweigh its costs.

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An original and one copy of this letter are being submitted.

Respectfully submitted,


H. Richard Jahnke
General Attorney

attachment

c: Chairman Reed E. Hundt
The Honorable James H. Quello
The Honorable Andrew C. Barrett
The Honorable Rachelle B. Chong
The Honorable Susan Ness
Kathleen M.H. Wallman
Mary Beth Richards
Anna Gomez
James D. Schlichting
Mark Nadel

Costly Talk

Why Pay-Phone Calls Can Get So Expensive And Spark Complaints

**Some Long-Distance Carriers
Reward Shops to Sign Up
And Then Soak Callers

Has Competition Gone Awry?**

By DANIEL PEARL

Staff Reporter of THE WALL STREET JOURNAL

DALLAS — When you are selling some of the country's most expensive telephone service, it helps if customers don't care what you charge.

Cynthia Whiting, a marketer for Oncor Communications Inc., is pursuing a Cleveland Laundromat owner named Nick. If he will choose Oncor as the long-distance carrier for the Laundromat's pay phone, she promises him \$50 up front plus monthly commission checks. Oncor also will pay the local phone company's switching charge and give him 20 minutes of free long-distance calls.

In the strange world of pay phones, Nick is the customer, and the person doing the dialing is merely an "end user." Like most of Ms. Whiting's customers, Nick says yes without asking how much the end user will pay.

The answer: a surcharge of up to \$10, plus an operator charge of about \$3, plus per-minute charges typically three times higher than those of AT&T Corp. Those rates, which enable Oncor to pay Nick so much, have helped the company become AT&T's largest competitor in the \$7 billion-a-year pay-phone industry.

Many Complaints

Not surprisingly, Oncor also is the industry's biggest source of complaints. In its Dallas offices, where Ms. Whiting and 100 other telemarketers sign up new customers, nearly as many sit in an adjacent room taking calls from angry end users.

"It's just so expensive," a shocked caller tells Dwight Harris, who gazes at a computer-screen summary of his \$27 bill. Mr. Harris, in a weary monotone, offers each disgruntled caller some free long-distance minutes as calculated by his computer. If the caller persists, Mr. Harris offers to reduce the bill.

Despite such appeasement, 1,024 people last year wrote complaint letters about Oncor to the Federal Communications Commission. One was Norman Shear, a New Jersey contractor who was billed \$19.10 for a 10-minute collect call from New York's Queens borough to his office and \$8.47 for a two-minute calling-card call from his office to Queens. "How can the government allow this to happen when deregulation of the phone company was to help everybody, not rape them?" he asked.

THE WALL STREET JOURNAL

TUESDAY, MAY 30, 1995

Impact of Deregulation

Congress wants to deregulate the industry even further on the assumption that more competition will lower prices. But competition over pay phones has made prices soar. Even AT&T charges 65% more than in 1984 for a 10-minute call from a Los Angeles pay phone to New York. Its operator-assistance charges have risen, too.

Government efforts to hold down rates have achieved little. In 1991, FCC staffers pressured some carriers to reduce rates, but Oncor—then called International Telecharge Inc.—slipped through the cracks. A year later, the FCC told Congress that "market forces are securing just and reasonable rates" because callers were dialing special codes to choose cheaper carriers. But market forces also were leading Oncor and similar companies to raise rates and sign up pay phones in poor neighborhoods, where callers often don't use the codes.

Now, the FCC is cracking down on Oncor directly. In March, it fined Oncor \$1.4 million for switching 94 phones in the New York subways from AT&T without permission from the Metropolitan Transit Authority. In April, the FCC ordered Oncor to lower its rates or justify them. The company is trying to negotiate a settlement of both matters. FCC officials say they soon will pursue other companies.

An Angry Regulator

"This stuff makes me furious," says Kathleen Wallman, the FCC's top telephone regulator. "There are companies operating out there as traps for the unwary. People deal with them by mistake, not by choice."

The pay-phone industry, too, is furious with Oncor. Its high rates give pay phones a bad name, says Vincent Sandusky, president of the American Public Communications Council, which refuses to cash Oncor's membership check. The trade group is pushing the FCC to formally cap rates.

However, Republican opposition to new regulations could keep the FCC from doing so. And Oncor—whose 48-year-old founder and sole shareholder, Ronald Haan, has given \$31,000 to the Republican National Committee since 1991—still has influence. Last week, Oncor helped spark opposition to a provision in a telecommunications bill that would make it harder for companies such as Oncor to go after Bell pay phones. That language was weakened by the time the bill passed the House Commerce Committee last Thursday.

Oncor is fighting rate caps, too, with leaflets, petitions and personal lobbying. Its officials say they are victims of high costs, counterattacks by AT&T and vicious competition for customers. They say AT&T would have little pay-phone competition if it weren't for companies such as Oncor, which charge more for the same reasons.

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that mom-and-pop stores charge more for bread. "We didn't set out to be the highest-priced carrier," Gregory Casey, vice president for regulatory affairs for the Bethesda, Md., company, told FCC officials recently.

The soft-spoken Mr. Haan did set out to be a major carrier, though. The former telephone-software salesman entered the public-phone business in 1986, and, to bet on it, later sold his software company for \$60 million.

Now, he pockets Oncor's annual after-tax profits of about \$11 million plus a "modest" salary, the company says. Though Oncor says it will take Mr. Haan another two years to recoup his investment, he lives in high style. He bought a Washington society magazine for his second wife. He married his third wife last year in a lavish ceremony on the French Riviera. The Haans regularly fly by private jet to homes in Boca Raton, Fla., Aspen, Colo., and San Francisco.

At first, his customers were hotel chains. His first public-phone company, National Telephone Services Inc., processed long-distance calls for hotel guests and gave hotels a percentage of each bill. But AT&T won back the big ones.

Small Firms Targeted

So, Mr. Haan began pursuing small businesses — restaurants, gasoline stations, hospitals and Laundromats — that had on their premises pay phones owned by local phone companies. Under a 1988 federal-court ruling, the site owner, not the phone company, picks the long-distance carrier for a pay phone, just as people choose one for their home phones.

As an operator-service provider (OSP), Mr. Haan wanted to become the "zero-

plus" carrier for as many phones as possible. That meant receiving any long-distance call that started with a zero rather than an access code; it included collect calls and those using another carrier's calling card. An OSP generally used its own operators and bought long-distance access wholesale.

Size was an advantage, Mr. Haan decided. With cash infusions and complicated financial maneuvers, he took over two larger, struggling OSPs in 1991 and created Oncor. The deals gave him a \$20 million operator center able to handle a million calls a day in 10 languages.

Mr. Haan was known as a brutal competitor. In its early months, Oncor seemed near failure, but Mr. Haan quickly turned a profit by squeezing creditors, shedding unprofitable accounts and increasing yields, his managers say. Oncor depicted itself in ads as an astronaut among cave-men and a lion among kittens.

As many as 300 rival OSPs competed against Oncor. Many offered record pay-offs to businesses with pay phones. For example, airports that once received 20% of each call's price soon were getting 28%. AT&T started paying commissions, too. Before long, airports could insist on being paid by the number of passengers they handled rather than by the call.

Adding New Customers

To sign up phones, an OSP sales agent merely sent a form to the local phone company, saying a restaurant or gasoline station wanted to switch carriers. If the owner wasn't available to sign, some agents settled for a waitress or cashier. At times, they sent unauthorized orders by wire, a tactic called "slamming." Oncor concedes some of its agents engaged in such "electronic warfare," but Mr. Haan, in a written response to questions, said, "We got slammed more than anybody."

Nynex Corp. says its pay phones were being switched at least once a month before it took steps to curb slamming last year. Now, Nynex advertisements urge New Yorkers to "look for" its pay phones and "look out" for independents. Yet nearly 40% of Nynex pay phones are linked to obscure OSPs, with Oncor having the biggest share after AT&T.

To stay ahead, Oncor uses a platoon of

Breakdown of an Oncor Bill

Oncor Communications says its average call lasts six minutes. A recent six-minute call to Sparrows Point, Md., from a Daytona, Fla., pay phone, using a Bell Atlantic calling card, generated an Oncor bill of \$13.93. A comparable call through AT&T would cost \$2.23. Here's how Oncor says it arrived at its bill:

\$4.03	Commissions to customers and distributors
2.57	Cost of sales, including operator center
2.34	Wages and administrative expenses
1.61	Payments to long-distance carriers
1.25	Uncollected or reduced bills
0.81	Oncor's net income
0.66	Oncor's corporate taxes
0.44	Bill collection by local phone company
0.22	Interest on Oncor's debt

distributors, outside sales companies. Its favorite is Western Group Communications Inc., of Dallas, whose star salesman is Marvin Brock, an energetic 35-year-old minister with two Bibles in the trunk of his car. He insists on saying "upgrade" instead of "switch" when he strides into bodegas or nightclubs to urge owners to sign up with Oncor. If they do, Mr. Brock collects a fee as long as the phone stays with Oncor. A good phone can bring him more than \$20 a month; he especially likes those used by Mexican immigrants to call their relatives collect.

Long-distance salesmen swarm into Dallas's poor neighborhoods. Mr. Brock says one besieged convenience-store owner used an Uzi to show him the door; Mr. Brock says he returned several times and is still after the business.

"They won't take no for an answer," complains Jackie Lay, owner of a new Dallas Laundromat. Three OSPs already have sought her single Southwestern Bell pay phone by the time Mr. Brock arrives.

"You're not receiving the dollar you're entitled to receive every time someone picks up the phone and dials zero," he tells her. Leaning on her mop, Ms. Lay says the phone is "the least of my worries right now." But Mr. Brock persists, giving her a card for free long-distance calls; it will be renewed if she switches to Oncor. Some weeks later, he signs her up.

Ignoring the Rates

Mr. Brock says he tries not to know Oncor's phone rates so that on the rare occasions he is asked he can say "I don't know" and move on. "You've got to spend your time wisely," he says.

All that hustling is one reason Oncor's rates are so high. The company says it paid \$55 million in commissions last year, or 29 cents of the end user's dollar. Distributors are getting more money, too. Oncor once paid them \$15 for every phone they signed up. But distributors would switch phones to Oncor one week and to a rival the next. Keeping them loyal required higher payments—and higher phone bills.

In 1993, for example, Oncor agreed to pay a distributor, Access America Digital Communications Inc., \$75 for each new pay phone, and it charged callers an extra 25 cents per minute to recoup the fee. The contract also allowed Oncor to increase the 25-cent surcharge if its profit margin fell below 15%. "Haan doesn't care how many hands are in the pie, as long as the pie is big enough that he gets a big slice of it," says Jack Lake, a former distributor. Oncor disputes that, saying it has tried to limit surcharges.

The high rates of some OSPs became a marketing tool for AT&T. In 1991, television ads urged pay-phone users to hang up and dial AT&T's five-digit access code if they didn't hear AT&T's familiar "bong." The company also introduced "proprietary" cards that don't work on phones wired to other carriers unless the caller dials an access code or 800 number first. AT&T even told people to destroy their old cards. And commercials urge people to dial AT&T's or MCI Communications Corp.'s special 800 numbers for collect calls.

Every time an end user "dials around" Oncor to save money, an Oncor customer misses a commission. To keep customers' checks from shrinking, Oncor raises commission rates. To keep its own revenue constant amid dwindling volume, Oncor acknowledges that it has increased its caller charges — giving people even more reason to avoid the company.

Cost-Cutting Moves

So Oncor cuts costs. It fired 10% of its employees in January. At the Dallas center, it checks phone traffic every 15 minutes and gives operators time off without pay if volume drops even 1%.

Oncor also is chasing independent pay-phone providers as customers. IPPs don't own nearly as many phones as do local phone companies. But they do choose their own long-distance carriers, and a typical IPP controls hundreds of phones. Oncor's trade advertisements promise them "the highest zero-plus commissions you can find anywhere."

Often, that isn't enough. J. Patrick Matthews, vice president of Publicom Inc., a Granger, Ind., IPP, is considering switching 150 phones to AT&T from Oncor. Payments to Publicom for each call would be lower, but most dialers now use access codes to avoid Oncor anyhow, he says.

To combat access codes, many IPPs encourage callers to use coins instead. "Call anywhere in the USA for 25 cents a minute," their phones say. Some do more; a California survey found that one in five pay phones there was illegally programmed so that callers couldn't use access codes or 800 numbers. And many pay-phone owners don't post required labels identifying a phone's OSP. At a Texaco station in Dallas, two adjacent phones are labeled "AT&T," but dialing "00" reveals that one is wired to Oncor.

Citing consumer confusion, the FCC in 1992 proposed a plan that would route every pay-phone call to a dialer's regular long-distance carrier — a change that would clobber OSPs such as Oncor. Some OSPs, fearing the end was near, raised their rates even higher.

Oncor and the rest of the pay-phone industry fought the plan, and it hasn't advanced. Now, Oncor and the American Public Communications Council are at odds. The trade group wouldn't let Oncor have a booth at its Las Vegas convention last month, but Mr. Haan set up an unofficial hospitality suite anyway. Oncor executives distributed "No Rate Caps" buttons, plus data showing that some rivals charge just as much.

On the convention floor, Garry McHenry, sales manager for a rival OSP, was rooting for Oncor. Some pay-phone companies may think they are Ma Bell, he said, beer bottle in hand, but "Oncor recognizes the industry for what it is."